

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BARRY W. THOMAS,

Plaintiff,

v.

COX COMMUNICATIONS, INC., a Delaware
corporation; COMCAST CORPORATION, a
Pennsylvania corporation; CENTENNIAL
COMMUNICATIONS CORP., a Delaware
corporation; CRICKET COMMUNICATIONS,
INC., a Delaware corporation; DOBSON
CELLULAR SYSTEMS, INC., an Oklahoma
corporation; CHARTER COMMUNICATIONS,
INC., a Delaware corporation; SPRINT
SPECTRUM L.P., a Delaware corporation;
NEXTEL OPERATIONS, INC., a Delaware
corporation; CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS, a Delaware general
partnership; TRACFONE WIRELESS, INC., a
Florida corporation; METROPCS INC., a
Delaware corporation; GENERAL MOTORS
CORPORATION, a Delaware corporation; and
ONSTAR CORP., a Delaware corporation,

Defendants.

Case No. 2:07-cv-231
(JURY TRIAL DEMANDED)

COMPLAINT

Plaintiff Barry W. Thomas ("Thomas"), by and through his counsel, complains and alleges as follows:

JURISDICTION

1. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U. S. C. §§ 271, 281, 283, and 284.
2. This Court has jurisdiction over this action pursuant to 28 U. S. C. § 1338(a), as this action arises under an Act of Congress relating to patents.
3. Venue is properly established in this Court pursuant to 28 U.S. C. §§ 1391(b) and (c) and 1400(b).

PARTIES

4. Plaintiff Barry W. Thomas is an individual residing at 16316 Woolwine Road, Charlotte, North Carolina.
5. Upon information and belief, Defendant Cox Communications Corporation (“Cox”) is a corporation of the State of Delaware having its principal place of business at 1400 Lake Hearn Drive, Atlanta, Georgia.
6. Upon information and belief, Cox sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.
7. Upon information and belief, Cox is subject to the personal jurisdiction of the courts of this State and this judicial district.
8. Upon information and belief, Defendant Comcast Corporation (“Comcast”) is a corporation of the State of Pennsylvania having its principal place of business at 1500 Market Street, Philadelphia, Pennsylvania.

9. Upon information and belief, Comcast sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.
10. Upon information and belief, Comcast is subject to the personal jurisdiction of the courts of this State and this judicial district.
11. Upon information and belief, Defendant Centennial Communications Corp. ("Centennial") is a corporation of the State of Delaware having its principal place of business at 3349 Route 138, Wall, New Jersey.
12. Upon information and belief, Centennial sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.
13. Upon information and belief, Centennial is subject to the personal jurisdiction of the courts of this State and this judicial district, and has admitted as such.
14. Upon information and belief, Defendant Cricket Communications, Inc. ("Cricket") is a corporation of the State of Delaware having its principal place of business at 10307 Pacific Center Court, San Diego, California.
15. Upon information and belief, Cricket sells and offers to sell its products in the State of Texas, has substantial contacts with the State of Texas, has a regular place of business in this State, and has made, used, sold, or offered for sale infringing products in the State of Texas.
16. Upon information and belief, Cricket is subject to the personal jurisdiction of the courts of this State.

17. Upon information and belief, Defendant Dobson Cellular Systems, Inc., (“Dobson”) is a corporation of the State of Oklahoma having its principal place of business at 14201 Wireless Way, Oklahoma City, Oklahoma.
18. Upon information and belief, Dobson sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.
19. Upon information and belief, Dobson is subject to the personal jurisdiction of the courts of this State and this judicial district.
20. Upon information and belief, Defendant Charter Communications, Inc. (“Charter”) is a corporation of the State of Delaware having its principal place of business at 12405 Powerscourt Drive, Saint Louis, Missouri.
21. Upon information and belief, Charter sells and offers to sell its products in the State of Texas, has substantial contacts with the State of Texas, has a regular place of business in this State, and has made, used, sold, or offered for sale infringing products in the State of Texas.
22. Upon information and belief, Charter is subject to the personal jurisdiction of the courts of this State.
23. Upon information and belief, Defendant Sprint Spectrum L.P. (“Sprint”) is a limited partnership organized under the laws of the state of Delaware and having its principal place of business at 490 Main Street, Kansas City, Missouri.
24. Upon information and belief, Sprint sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a

regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.

25. Upon information and belief, Sprint is subject to the personal jurisdiction of the courts of this State and this judicial district.

26. Upon information and belief, Defendant Nextel Operations, Inc. ("Nextel") is a corporation of the state of Delaware having its principal place of business at 2001 Edmund Halley Drive, Reston, Virginia.

27. Upon information and belief, Nextel sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.

28. Upon information and belief, Nextel is subject to the personal jurisdiction of the courts of this State and this judicial district.

29. Upon information and belief, Defendant Cellco Partnership d/b/a Verizon Wireless ("Verizon") is a general partnership organized under the laws of the state of Delaware and having its principal place of business at 180 Washington Valley Road, Bedminster, New Jersey, and is composed of wholly owned indirect subsidiaries of Verizon Communications Inc. and Vodafone Group Plc.

30. Upon information and belief, Verizon sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.

31. Upon information and belief, Verizon is subject to the personal jurisdiction of the courts of this State and this judicial district.
32. Upon information and belief, Defendant TracFone Wireless, Inc. ("TracFone") is a corporation of the state of Florida having its principal place of business at 8390 Northwest 25th Street, Miami, Florida.
33. Upon information and belief, TracFone sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.
34. Upon information and belief, TracFone is subject to the personal jurisdiction of the courts of this State and this judicial district.
35. Upon information and belief, Defendant MetroPCS, Inc. ("MetroPCS") is a corporation organized under the laws of the state of Delaware and having its principal place of business at 8144 Walnut Hill Lane, Suite 800, Dallas, Texas.
36. Upon information and belief, MetroPCS sells and offers to sell its products in the State of Texas, has substantial contacts with this State, has its principal place of business in this State, and has made, used, sold, or offered for sale infringing products in the State of Texas.
37. Upon information and belief, MetroPCS is subject to the personal jurisdiction of the courts of this State.
38. Upon information and belief, Defendant General Motors Corporation ("GM") is a corporation organized under the laws of the state of Delaware and having its principal place of business at 300 Renaissance Center, Detroit, Michigan.

39. Upon information and belief, GM sells and offers to sell its products in the State of Texas, has substantial contacts with this State, has its principal place of business in this State, and has made, used, sold, or offered for sale infringing products in the State of Texas.
40. Upon information and belief, GM is subject to the personal jurisdiction of the courts of this State.
41. Upon information and belief, Defendant OnStar Corp. ("OnStar") is a corporation organized under the laws of the state of Delaware and having its principal place of business at 400 Renaissance Center, Detroit, Michigan.
42. Upon information and belief, OnStar sells and offers to sell its products in the State of Texas, has substantial contacts with this State, has its principal place of business in this State, and has made, used, sold, or offered for sale infringing products in the State of Texas.
43. Upon information and belief, OnStar is subject to the personal jurisdiction of the courts of this State.

COUNT I
INFRINGEMENT OF U. S. PATENT NO. 4,777,354

44. On October 11, 1988, United States Patent No. 4,777,354 ("the '354 patent"), entitled "System for Controlling the Supply Utility Services to Consumers," was duly and legally issued to inventor Plaintiff Barry Thomas. A copy of the '354 patent is attached hereto as **Exhibit A**.
45. At all times relevant to this action, Thomas was and is the owner of the entire right, title, and interest, legal and equitable, in the '354 the patent.
46. The '354 patent was valid, subsisting, and enforceable within the United States until its expiration on January 27, 2006.

47. Defendants Cox, Comcast, and Charter infringed the '354 patent by using (including leasing, renting, or otherwise giving use of), selling, and/or offering to sell cable television reception equipment in the United States, and/or importing the same into the United States, which equipment was covered by one or more of the claims of the '354 patent, in violation of 35 U.S.C. § 271(a).
48. Defendants Centennial, Dobson, Sprint, Nextel, Verizon, TracFone, and MetroPCS infringed the '354 patent by using, selling, and/or offering to sell wireless telephone handset equipment in the United States, and/or importing the same into the United States, which equipment was covered by one or more claims of the '354 patent, in violation of 35 U.S.C. § 271(a).
49. Defendants GM and OnStar infringed the '354 patent by using, selling, and/or offering to sell wireless communications and positioning equipment in the United States, and/or importing the same into the United States, which equipment was covered by one or more claims of the '354 patent, in violation of 35 U.S.C. § 271(a).
50. The acts of direct infringement of the '354 patent undertaken by Cox, Comcast, Sprint, Nextel, and Verizon were performed with the full knowledge of the '354 patent and without leave, license, or permission of Plaintiff. Such activities constitute willful infringement of the '354 patent.

COUNT II
INDUCING PATENT INFRINGEMENT

51. Plaintiff realleges and incorporates by reference paragraphs 1 through 50 of this complaint into Count II, as if fully set forth herein.

52. Defendants Cox, Comcast, Sprint, Nextel, and Verizon infringed the '354 patent by actively inducing others to use and/or to sell equipment that infringes the '354 patent with knowledge that such use constitutes infringement by inducement in violation of 35 U.S.C. § 271(b).
53. Defendants Cox, Comcast, Sprint, Nextel, and Verizon have committed these acts of infringement with the full knowledge of the '354 patent and without leave, license, or permission of Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays unto the court that Judgment be granted in his favor and that he be awarded the following relief:

1. Declare that each Defendant's acts and conduct infringed the '354 patent and the exclusive rights in said patent held by Plaintiff;
2. Declare that Defendants Cox, Comcast, Sprint, Nextel, and Verizon each induced infringement of the '354 patent, in violation of 35 U. S. C. § 271(b);
3. Declare that the infringement by Defendants Cox, Comcast, Sprint, Nextel, and Verizon was willful;
4. Require each Defendant to account to Plaintiff for all profits and expense realized by Defendants and any subsidiary or affiliate of Defendants during the term of the '354 patent;
5. Award Plaintiff actual and enhanced damages suffered as a result of each Defendant's infringement of the '354 patent and the rights held by Plaintiff in said patent, and, as to Defendants Cox, Comcast, Sprint, Nextel, and Verizon, pursuant to a finding of willful infringement, order that such damages be trebled;

6. Declare this case to be exceptional under 35 U.S.C. § 285 and award reasonable attorney fees and Plaintiff's costs of suit, pursuant to 35 U.S.C. § 284;
7. Grant such other and further relief as the equity of the case may require and as this Court may deem just and proper.

A jury trial is demanded.


Date: May ____, 2007.

OF COUNSEL:

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Respectfully Submitted:

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By: 

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TBN 24036729

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Barry W. Thomas

(b) County of Residence of First Listed Plaintiff Mecklenburg, NC
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Steve Harrelson, PO Box 40, Texarkana, AR 75504

DEFENDANTS

Cox Communications, Inc., et al

County of Residence of First Listed Defendant Fulton, GA; Kent, GA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

35 USC § 271, 281, 283, 284

Brief description of cause:

Patent infringement

VII. REQUESTED IN COMPLAINT:CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

6/6/2007

SIGNATURE OF ATTORNEY OF RECORD

Steve Harrelson

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RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____